

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert B. Harkness

Application No. 10/648,412

Filed: August 25, 2003

Confirmation No. 4022

For: CLIMBER ROSE PLANT NAMED
'HARYUP'

Examiner:

Art Unit: 1661

Attorney Reference No. 2747-66693

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney
for Applicant(s)

Date Mailed January 12, 2004

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**PETITION FOR SUSPENSION OF PROSECUTION
UNDER 37 C.F.R. § 1.103**

Applicant petitions the Commissioner to suspend action on the application referenced above for six months.

An Examiner's Answer dated July 1, 2003 in answer to Applicant's Brief filed September 3, 2002, was issued in the parent application Serial No. 09/255,107 rejecting the application under 35 USC § 102 on the ground that the claimed invention was anticipated by a publication which was enabled by the public availability of the plant of the application by reason of its sale outside of the United States more than one year before the parent application was filed. No reply to an Office Action is currently outstanding in the subject application.

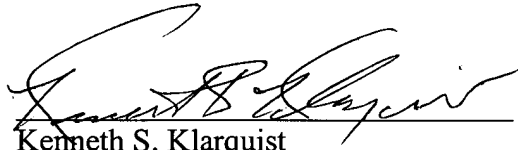
These issues are identical to those that are present in pending appeals with the Court of Appeals Federal Circuit in Appeals No. 03-1585 and No. 03-1569, namely, whether an admittedly non-enabling printed publication describing a plant is enabled by reason of the fact that a plant is publicly available by reason of its sale outside the United States. This same issue is present in several other pending applications and it is in the best interests of both the U.S. Patent and Trademark Office and the Applicant to suspend action on the application for the requested six months, and preferably for the entire period of the pending appeals noted above. A check in payment of the petition fee of \$130 is enclosed herewith.

Should there be any question, please do not hesitate to call the undersigned.

Respectfully submitted,

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